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.. Respondents

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.1408 of 2010

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ORDER:

The 1st respondent was entrusted with driving of bus between Ibrahimpatnam to Tandur on 05.05.1993. The bus met with an accident while coming from Vikarabad to Hyderabad at Khanapur village, which resulted in death of four persons and grievous injury to another person. Disciplinary proceedings as well as criminal prosecution was launched against the 1st respondent. 1st respondent was served with charge memo dated 05.05.1993 containing two charges and was placed under suspension on 19.05.1993. The disciplinary proceedings resulted in imposing of punishment of removal from service by order dated 27.01.1994. The said order of removal was affirmed by the appellate authority as well as the revisional authority. Aggrieved thereby the

1st respondent instituted I.D.No.303 of 1999 on the file of Additional Tribunal-cum-Additional Labour Court, Hyderabad. Initially the Labour Court rejected the claim of the 1st respondent. Aggrieved thereby 1st respondent filed W.P.No.5403 of 2001. This Court allowed the said writ petition and remanded the matter to the Labour Court for consideration afresh. As a consequence to the remand, the Labour Court passed award on 15.12.2008 and held removal of 1st respondent from service as illegal and directed reinstatement with continuity of service and attendant benefits but denied the back wages. Aggrieved thereby this writ petition is filed by the petitioner-Corporation.

2. Heard learned Standing counsel for the petitioner and learned counsel for the 1st respondent.

3. Learned counsel for the petitioner would urge that Labour Court erred in granting relief in favour of the 1st respondent as the 1st respondent-driver was involved in a fatal accident due to his rash and negligent driving which resulted in death of four persons and grievous injury to one person. The evidence on record would show that the vehicle was driven in a rash and negligent manner. The vehicle was found on the extreme right side of the road which would clearly indicate that the driver lost balance in controlling the vehicle and since the vehicle was moving from the left side of the road to the right side, caused accident to the vehicle coming in the opposite direction. If only the driver took reasonable care in driving the vehicle, such accident could not have been occurred. Thus, the rash and negligent driving of the driver was apparent on the face of record and the disciplinary proceedings would substantiate the allegations made against the 1st respondent. He would therefore submit that the Labour Court erred in granting relief of reinstatement with continuity of service and attendant benefits.

4. Learned counsel for the 1st respondent-driver submits that 1st respondent was simultaneously proceeded in Departmental proceedings as well as in criminal proceedings. He was shown as accused in C.C.No.117 of 1993 on the file of Judicial Magistrate of First Class, Nalgonda, on the allegation of rash and negligent driving of the vehicle. On thorough consideration of the evidence on record, the criminal Court recorded finding of not guilty and he was acquitted of the charge. He would therefore submit that once 1st respondent was acquitted of the allegation of rash and negligent driving by the competent Court, the petitioner ought not to have been proceeded with

the departmental action. According to learned counsel for the 1st respondent, once rash and negligent driving is not proved, the question of imposing punishment would not arise. He also submits that the Labour Court has independently evaluated the evidence on record and found that the allegation that the 1st respondent was driving in rash and negligent manner and that the vehicle was moving to the extreme right side of the road was erroneous. The sketch of the scene of incident, which is placed on record would show that vehicle was standing in the middle of the road. Thus, it would contradict the allegation of the employer.

5. The 1st respondent was served with charge memo containing two charges. The sum and substance of the allegation in the first charge is rash and negligent driving of the vehicle on the fateful day and the allegation in second charge is lack of anticipation while driving the vehicle.

6. A bare perusal of the said two charges would show that they relate to alleged accident on the fateful day involving the vehicle driven by the 1st respondent and both are interrelated.

7. With reference to the allegation of rash and negligent driving, on conducting detailed trial and on evaluation of evidence on record, the criminal Court found that there was no material to establish that which vehicle was responsible for causing the accident and which of the vehicle was driven in a rash and negligent manner is not available on record and such issue is fatal to the entire case of the prosecution and trial Court found that the allegation of rash and negligent driving is not proved.

8. It is the first and foremost contention of the learned Standing counsel that the fact that the vehicle was found on the extreme right side of the road would justify the stand of the Corporation that the 1st respondent was driving in rash and negligent manner. The very issue

was considered by the Labour Court and noticed that no witnesses were examined during domestic enquiry to find out the events happened on the fateful day. The Labour Court also noticed that there were no skid marks or tyre marks on the road which would indicate that the driver failed to apply brakes. Even the Inquiry Officer noticed the same in his proceedings. According to the Labour Court, the observations of the Deputy Superintendent (T) which was the sole basis for the Inquiry Officer's findings, was based on surmises and conjunctures and contrary to the material available on record.

9. These are the factual findings recorded by the Labour Court on analysis of the evidence on record and in exercise of power of judicial review under Article 226 of the Constitution of India, this Court cannot sit in appeal to re-appreciate the evidence and finding of fact recorded by the Labour Court. The Labour Court has assigned due reasons in support of its findings and also placed reliance on the judgment of Criminal Court on the issue of rash and negligent driving. It is also appropriate to notice that the criminal Court rendered its judgment much prior to the consideration of industrial dispute by the Labour Court. Therefore, I do not see any perversity or patent error in appreciation of material on record warranting interference by this Court.

10. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

P.NAVEEN RAO,J

11th August, 2016
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